

PUBLIC MEETING MINUTES

April 2, 2009

PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
Sacramento, CA 95811

Chair Rystrom called the meeting to order at 10:00 a.m.

Members Present

Tiffany Rystrom, Chair
Sally M. McKeag, Member
Karen L. Neuwald, Member
Robin W. Wesley, Member
Alice Dowdin Calvillo, Member

Staff Present

Tami Bogert, General Counsel
Les Chisholm, Division Chief, Office of the General Counsel
Bernard McMonigle, Chief Administrative Law Judge
Eileen Potter, Chief Administrative Officer

Call to Order

Chair Rystrom called the Board to order for a return to the open session of the February 5, 2009 Board meeting. She reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, and pending litigation, as appropriate.

Chair Rystrom read into the record the decisions that issued since the open session in February. Those were PERB Decision Nos. 2004-M, 2005-M, 2006-M, 2007, 2008, 2009-M, 2010-M, 2011, 2012, 2013-S, 2014-M, 2015, 2016, and 2017-S, and Administrative Appeal No. Ad-377-S. She stated that PERB's General Counsel would report on four requests for injunctive relief (I.R.) as follows: I.R. No. 564 (*International Association of Firefighters, Local 689 v. City of Alameda*), the request was denied; I.R. No. 565 (*SEIU United Long Term Care Workers Union, Local 6434 v. San Bernardino In-Home Supportive Services Public Authority*), the request was withdrawn; I.R. No. 566 (*Siskiyou County Employees' Association v. SCEA/AFSCME Local 3899*), the request was denied; and I.R. No. 567 (*Siskiyou County Employees' Association v. County of Siskiyou*), the request was denied. A document containing a listing of the aforementioned decisions was made available at today's meeting.

Motion: Motion by Member Wesley and seconded by Member Dowdin Calvillo to close the February 5, 2009 public meeting.

Ayes: Rystrom, McKeag, Neuwald, Wesley, and Dowdin Calvillo.

Motion Carried.

Chair Rystrom opened the meeting of April 2, 2009, and Member Dowdin Calvillo led in the Pledge of Allegiance to the Flag.

Minutes

Motion: Motion by Member Dowdin Calvillo and seconded by Member Wesley that the Board adopt the minutes of the Public Meeting of PERB for February 5, 2009.

Ayes: Rystrom, McKeag, Neuwald, Wesley, and Dowdin Calvillo.

Motion Carried.

Comments From Public Participants

None.

Staff Reports

a. Administrative Report

Eileen Potter, Chief Administrative Officer reported on the relocation of PERB's Los Angeles Regional Office (LARO). The move to the new office located in Glendale at 700 North Central, Suite 200, successfully came to conclusion, and PERB was open for business on March 2. This relocation project took approximately four years to complete. Ms. Potter stated that the new space turned out very nice, is above expectations, and should serve PERB constituents and staff well. Ms. Potter coordinated the LARO relocation from PERB's Headquarters Office in Sacramento. She stated that the move would not have been possible without the LARO staff who took ownership to facilitate the move to the new office. She particularly wanted to thank Regional Attorneys Eric Cu, Sean McKee and Valerie Racho for their assistance. Ms. Potter also pointed out the contributions of Ben Damian, Business Services Officer, who worked tirelessly from PERB's Headquarters Office during the move.

Ms. Potter next reported on the budget. She stated that PERB continues to monitor current year spending with an eye towards meeting obligations without overspending its appropriations. PERB is closely watching the number of elections and associated costs as elections are an unbudgeted liability. Ms. Potter stated that, as of today, PERB is on course to close the 2008-2009 fiscal year within the appropriation limits.

She reported also that as of today, PERB's 2009-2010 fiscal year proposed budget remains as set forth in the Governor's January 10, 2009 budget. She stated that there is one control

section that would affect PERB, that is the reduction of the price increase previously given to all State agencies. This is to be removed from PERB's budget. Ms. Potter concluded that, like all State agencies, PERB is waiting to see how Fiscal Year 2009-2010 unfolds.

Chair Rystrom commented on the LARO relocation, that it was extremely difficult and would not have happened but for the herculean efforts of Ms. Potter. She thanked and acknowledged Ms. Potter for the four days of hard and beyond-the-call-of-duty work during the move.

Ms. Potter thanked the Board and answered a question by Member Dowdin Calvillo about the reduction of the price increase given to State agencies. The actual dollar amount for PERB is \$46,000. She continued that the Department of Finance gives agencies a formula, based on prior year operating expenses, which is about 3.2 percent. Generally, the Governor's January 10 budget includes the reduction of the price increase.

With regard to elections, Member Neuwald inquired about an election involving the Service Employees International Union (SEIU) based on an observation in a newspaper article.

General Counsel Tami Bogert stated that she had not read the newspaper article, but that she was aware of the election and that Les Chisholm had spoken to a reporter, Jon Ortiz, from the Sacramento Bee. To the extent this may be the article to which Member Neuwald was referring, she would turn to Mr. Chisholm to respond to the question.

Mr. Chisholm answered that PERB was currently conducting a decertification election in State Bargaining Unit 21, which is the education consultants and librarians unit. He stated that the unit size is approximately 600, ballots were mailed yesterday to eligible voters, and the ballot count is scheduled towards the end of the month.

b. Legal Report

Ms. Bogert reported that the monthly activity and litigation reports had been distributed to the Board. She highlighted several items in those reports, specifically since the Board's last public meeting in February. With regard to monthly activities, during the months of February and March, 186 new cases were filed with PERB, 127 case investigations were completed, and 58 informal settlement conferences were conducted by staff. As an illustration of PERB's increasing workload Ms. Bogert reported on year-to-date comparisons: the number of unfair practice charge filings is up this year from last year at this time. Specifically, 634 new charges have been filed already this fiscal year compared to 590 filed last year at this time. She reported that during the months of February and March, as noted by Chair Rystrom, four requests for injunctive relief were filed with PERB: three were considered and ultimately denied by the Board, and one was withdrawn by the filing party.

Ms. Bogert had two brief notes regarding litigation matters. She reported that a new litigation case had been filed involving a mandamus action brought by the California Correctional Peace Officers Association against PERB in Unfair Practice Charge No. SA-CE-1621-S. She stated, however, that since the Board already issued a decision in SA-CE-1621-S, it is anticipated that this litigation matter can quickly and efficiently be disposed of. (*California Correctional Peace Officers' Association v. PERB*, Sacramento County Superior Court Case No. 34200980000187.)

The second matter that Ms. Bogert reported on was an existing litigation case, which started years ago involving a partial dismissal in a PERB case, *International Association of Firefighters, Local 188 v. PERB* (California Court of Appeal, First Appellate District, Case No. A114959, Contra Costa County Superior Court Case No. N050232). This case has been pending in the First District Court of Appeal where oral arguments occurred last month. The Court more recently issued a published opinion in which it affirmed the trial court's denial of Local 188's lawsuit and went a step further by awarding costs to PERB in that case. Notably, the Court, in addition to agreeing with PERB that the decision itself to lay off firefighters need not be negotiated, held that in limited circumstances some PERB dismissals are subject to judicial review. The Court's opinion in that case is not yet final, and PERB will continue to assess it.

In conclusion Ms. Bogert also thanked PERB's Chief Administrative Officer, Eileen Potter, as well as all staff involved in the LARO move. She stated that it was a lot of work and was completed without a hitch to PERB constituents.

Bernard McMonigle, Chief Administrative Law Judge, also thanked Ms. Potter, stating that he has observed the lengthy LARO relocation process. He congratulated Ms. Potter's successful completion of the project, resulting in much improved office accommodations. He stated his knowledge that the new offices in Glendale provided the administrative law judges (ALJs) with upgraded hearing rooms, better equipment, and that they were very happy with the results.

Mr. McMonigle continued by reporting on the activities of the Division of Administrative Law. Since the end of February, there are six ALJs. Because of budget restraints, the seventh position would probably not be filled for some time. He stated that the caseload in the division continues to grow. Last fiscal year, with seven ALJs, he assigned 83 cases for formal hearing. To date, this fiscal year, he has assigned 112 cases. Currently, the division has 63 cases assigned and scheduled for formal hearing, and there are 25 decisions to write. Also this fiscal year, 37 proposed decisions have issued, and the average time from submission to issuance of those decisions is 98 days. With only six ALJs, Mr. McMonigle concluded, the division is scheduling cases for formal hearing in August and September rather than the traditional 60-90 days in which they were able to do last fall.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, reported on legislation that affect matters within PERB's jurisdiction or are of interest. Among the legislation being

tracked, Mr. Chisholm stated that he wanted to call the Board's attention to one bill in particular: Senate Bill 656 (DeSaulnier). SB 656 would make, if enacted, a further change to PERB's jurisdiction under the Meyers-Milias-Brown Act (MMBA). Presently, the statute excludes from PERB jurisdiction peace officers as defined under Section 830.1 of the Penal Code. He stated that there are bargaining units in various cities and counties, referred to as mixed units, that include both peace officers, as defined, and other personnel. There have been cases filed at PERB where the question of jurisdiction over issues affecting that bargaining unit have been raised and that PERB has been asserting jurisdiction over any dispute that affects the bargaining unit as a whole. SB 656 would amend the MMBA to extend the exclusion from PERB jurisdiction any unit comprised of a majority of persons who fall within the definition of peace officers under Penal Code section 830.1. This would leave some mixed units within PERB jurisdiction, but a determination would have to be made as to whether peace officers are the majority in the unit. Mr. Chisholm reported that SB 656 has been assigned to a policy committee, but a hearing has yet to be scheduled.

Chair Rystrom asked if SB 656 provided any information on how the determination of majority should be made.

Mr. Chisholm responded that there is no discussion regarding the determination of majority in the bill itself, that there is no analysis of the bill yet, nor has there been a hearing. He stated that it could be presumed that it would be a purely numerical question. For example, if there are 100 employees in the bargaining unit, 51 peace officers would make a majority.

Mr. Chisholm continued, in response to Chair Rystrom's question, that most likely either PERB or a court would be responsible for the count. He stated that any entity wanting to bring an issue forward should determine whether to bring the matter to PERB or a court if it was not within PERB's jurisdiction. Chair Rystrom asked if there was a burden of proof indicated in the bill to which Mr. Chisholm answered that there was none currently.

Member Neuwald asked who sponsored SB 656. Mr. Chisholm stated that he had not yet talked to anyone in the author's office nor is there an analysis of the bill.

Motion: Motion by Member McKeag and seconded by Member Neuwald that the Administrative, Legal (including General Counsel and Chief Administrative Law Judge), and Legislative Reports be received.

Ayes: Rystrom, McKeag, Neuwald, Wesley, and Dowdin Calvillo.

Motion Carried.

Old Business

None.

New Business

None.

General Discussion

There being no further business, the meeting is recessed to continuous closed session.

The Board will meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through June 11, 2009, when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

Motion: Motion by Member Wesley and seconded by Member Dowdin Calvillo that there being no further business, the meeting be recessed to continuous closed session.

Ayes: Rystrom, McKeag, Neuwald, Wesley, and Dowdin Calvillo.

Motion Carried.

Respectfully submitted,

Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Alice Dowdin Calvillo, Acting Chair